

01004

1989/01/26

MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S
REPUBLIC OF CHINA REGARDING INTERNATIONAL TRADE
IN COMMERCIAL LAUNCH SERVICES

I. PURPOSE

The Government of the United States of America (U.S.) and the Government of the People's Republic of China (PRC) have entered into this Memorandum of Agreement (Agreement), of which the attached Annex is an integral part, to address certain issues regarding international trade in commercial launch services including entry in an appropriate manner of the PRC into the international market for commercial launch services.

II. TRADE ISSUES AND MARKET ENTRY

The Delegation of the People's Republic of China and the Delegation of the United States of America held two rounds of negotiations in Beijing and Washington, D.C. As a result of these discussions, the parties have agreed that certain measures are appropriate to address certain issues regarding international trade in commercial launch services, including entry in an appropriate manner of PRC providers of commercial launch into the international market for commercial launch services. Accordingly, the U.S. and the PRC have agreed as follows:

- a. The U.S. and the PRC support the application of market principles to international competition among providers of commercial launch services, including the avoidance of below-cost pricing.

government inducements, and unfair trade practices.

b. To bring about entry in an appropriate manner, the PRC shall take steps to ensure that providers of commercial launch services controlled by or operating within the territory of the PRC do not materially impair the smooth and effective functioning of the international market for commercial launch services.

(i) Among these steps, the PRC shall ensure that any direct or indirect government support extended to its providers of commercial launch services is in accord with practices prevailing in the international market.

(ii) The PRC shall require that its providers of commercial launch services offer and conclude any contracts to provide commercial launch services to international customers at prices, terms, and conditions which are on a par with those prices, terms, and conditions prevailing in the international market for comparable commercial launch services.

Draft
(iii) The PRC agrees that it will prevent its providers of commercial launch services from offering introductory or promotional prices for launch services except for the first or, in extraordinary circumstances, second successful commercial launch of a new launch vehicle. In this regard, promotional prices will not be offered for launches on the Long March IIIB or III under any contract other than the contract for the successful launch of the Aussat 3-1 and 3-2 satellites.

Check?
(iv) The PRC agrees to require its launch service or

insurance providers to offer international customers any insurance or reflight guarantees on a par with prevailing rates and practices in international markets for comparable risk.

WJ (c) In view of the concerns about the launch services market expressed by several countries, the PRC expressed its understanding. The PRC explained that: China has a limited capability of manufacturing launch vehicles. In addition to meeting the needs of domestic Chinese satellite launches, its providers of commercial launch services are only able to offer a limited number of communications satellite launches each year for international customers. Chinese launch services, therefore, are only a supplement to the world market, providing international customers with a new option.

After mutual and friendly consultations, the U.S. and the PRC agreed:

(i) PRC providers of commercial launch services shall not launch more than 9 communications satellites for international customers (including the two ASIASAT and one ASIASAT satellite) during the period of this Agreement, and

(ii) The PRC shall require that any commitments to provide commercial launch services to international customers by PRC launch service providers are proportionately distributed over the period of the Agreement. To this end, the PRC shall prevent a disproportionate

concentration of such commitments during any two-year period of the Agreement. The PRC may make commitments in any 3-year period of the Agreement consistent with subparagraph (i) above. The PRC shall also require that PRC launch service providers shall not commit at any time to launch in any calendar year covered by the Agreement more than twice the average annual number of launches permitted under subparagraph (i) above. The PRC shall seek to ensure that PRC launches of communications satellites for international customers are performed as scheduled in the original launch commitment.

d. The U.S. stated that the U.S. does not provide government inducements of any kind in connection with the provision of commercial launch services to international customers which would create discrimination against launch service providers of other nations and has no intention of providing such inducements in the future. Accordingly, the PRC stated it agreed not to offer inducements of any kind in connection with the provision of commercial launch services to international customers which would create discrimination against launch service providers of other nations.

III. NON-DISCRIMINATION

1. The U.S. stated that U.S. providers of commercial launch services do not discriminate unfairly against any international customers or suppliers and that it is not U.S. Government policy

~~to encourage any such unfair discrimination by U.S. providers of commercial launch services.~~

2. Accordingly, in implementing its commitments under this Agreement, the PRC shall require that its providers of commercial launch services not discriminate unfairly against any international customers or suppliers.

IV. CONSULTATIONS

1. The PRC and U.S. will consult annually with respect to the obligations in this Agreement and related matters, including the nature and extent of direct and indirect government support provided to commercial launch services providers and developments in the international market for commercial launch services.

2. In addition, each party undertakes to enter into consultations within thirty (30) days of a request by the other party to discuss matters of particular concern.

3. During annual consultations, the limitation on the total number of communications satellites that may be launched by PRC providers of commercial launch services may be reconsidered upon request of the PRC in light of unforeseen developments in the commercial launch services market. A U.S. decision on such a request shall be made within thirty (30) days after the completion of the annual consultations.

4. The U.S. and the PRC agree to work toward a common understanding of the application of market principles to prices, terms, and conditions of commercial launch services for international

customers.

5. To facilitate the annual consultations, the U.S. and the PRC agree to exchange information as follows:

(a) The U.S. shall each year in advance of such consultations

provide to the PRC such publicly releasable information as it possesses with respect to prices, terms and conditions prevailing in the international market for commercial launch services.

(b) The PRC shall each year in advance of such consultations provide comprehensive information to the U.S. regarding prices, terms, and conditions offered by PRC providers of commercial launch services for the launch of satellites licensed by the U.S. The PRC may also provide other information that it believes may have a material effect on pricing practices of PRC providers of commercial launch services.

(c) The PRC may request that the U.S. provide additional publicly releasable information with respect to international prices, terms and conditions, and may in addition request U.S. views regarding prevailing international market conditions and likely future developments, as well as government supports or inducements. The U.S. shall respond to such requests within thirty (30) days. If such information cannot be provided directly because of business confidentiality, the U.S. shall provide such information in summary form.

(d) The U.S. may request additional information with respect to the prices, terms, and conditions offered by PRC providers

of commercial launch services and any PRC government supports or inducements. The PRC shall respond to such requests within thirty (30) days. If such information cannot be provided directly because of business confidentiality, the PRC shall provide such information in summary form.

(a) The U.S. and the PRC shall keep all information received from each other under this paragraph strictly confidential and shall not provide it to any other government or any private person without the written consent of the other.

6. The U.S. and the PRC shall also provide each year in advance of annual consultations information on a consolidated basis concerning the commitments their launch service providers have undertaken to provide commercial launch services for international customers. This information may be made publicly available.

7. If a launch of a communications satellite for an international customer will not be performed as scheduled, the PRC shall notify the U.S. regarding the reasons for the delay and the new date for the launch as soon as possible.

8. It is understood that the U.S. and the PRC will review the information contained in this Article during annual consultations in the context of developments in the international market for commercial launch services.

V. CLARIFICATION OF RIGHTS AND OBLIGATIONS

1. If, after friendly consultations with the PRC, the U.S. determines that there is clear evidence that the provisions of

8

this Agreement have been violated, the U.S. reserves its right to take any action permitted under U.S. law and regulations. The U.S. shall seek to avoid actions inconsistent with this Agreement.

2. With regard to export licenses, any application for a U.S. export license will be reviewed on a case-by-case basis consistent with U.S. law and regulations. Nothing in this Agreement shall be construed to mean that the U.S. is constrained from taking any appropriate action with respect to any U.S. export license, consistent with U.S. law and regulations. Nevertheless, the U.S. will do its utmost to assure, consistent with U.S. law and regulations, continuity of issued license(s) and the completion of the transactions covered in such license(s).

VI. DISCUSSIONS ON INTERNATIONAL RULES

The U.S. and the PRC are prepared to enter into discussions with other interested parties on comprehensive international rules with respect to government involvement in, and other matters relating to, the international market for commercial launch services. It is understood, however, that nothing in this Agreement shall prejudice any position on any issue that either the U.S. or the PRC may take in those discussions.

VII. COMPREHENSIVE REVIEW

The U.S. and the PRC shall engage in a comprehensive review of the terms and operation of this Agreement beginning in September 1991.

9

VIII. ~~COPYRIGHT FORGE~~

This Agreement shall enter into force upon notification by the Government of the United States of America to the Government of the People's Republic of China that a U.S. license for the export of the ASIASAT or AUSSAT satellite(s), or any other satellite, to the People's Republic of China for launch therein, has been approved. Unless extended by agreement of the PRC and the U.S., this Agreement shall terminate on December 31, 1994. It may be terminated at any time by mutual agreement if superseded by an international agreement on government involvement in, and other matters relating to, the international market for commercial launch services or under such other circumstances as may be mutually agreed.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, D.C., in duplicate, in the English and Chinese languages, both texts being equally authentic this twenty-sixth day of January, 1989.

for the Government of the
United States of America:

Alan R. Horne

for the Government of the
People's Republic of China:



Han Xu
PRC Ambassador to USA

ANNEX

The following agreed definitions constitute an integral part of the Memorandum of Agreement Between the Government of the United States of America and the Government of the People's Republic of China Regarding International Trade in Commercial Launch Services of January 26, 1989.

1. The term "commercial launch services" refers to any commercially provided launch of any satellite, including communications satellites, for an international customer.
2. The term "communications satellite" refers to any satellite which is a primary payload of a launch, and which provides telecommunications services. It refers primarily to, but is not limited to, communications satellites in geostationary orbit.
3. The term "international customer" refers to the following:
 - (a) any institution or business entity, other than those institutions or entities located within the territory of the PRC and owned or controlled by PRC nationals; or
 - (b) any government other than that of the PRC; or
 - (c) any international organization or quasi-governmental consortium;

11

which is the ultimate owner or operator of a satellite or which will deliver the satellite to such ultimate owner or operator.

4. The term "practices prevailing in the international market" in Article II (b)(1) refers to practices by governments of market economies.

5. The term "prices, terms, and conditions prevailing in the international market for comparable launch services" in Article II (b)(1) includes but is not limited to prices, financing terms and conditions and the schedule for progress payments offered to international customers by commercial launch service providers in market economies.

6. Government "inducements" with respect to particular launch services transactions include, but are not limited to, unreasonable political pressure, the provision of any resources of commercial value unrelated to the launch service competition and offers of favorable treatment under or access to: defense and national security policies and programs, development assistance policies and programs, and general economic policies and programs. (e.g., trade, investment, debt, and foreign exchange policies).

7. The term "commitment" means any agreement by an international customer with PRC providers of commercial launch services to launch a communications satellite, which effectively removes the

12

launces from international commercial competition. The term "commitment" does not include reservation agreements.

Federal Register Notice

Agency: Office of the United States Trade Representative

Action: Notice of guidelines for U.S. implementation of the Memorandum of Agreement Between the United States of America and the Government of the People's Republic of China Regarding International Trade in Commercial Launch Services (the Agreement.)

Dates: These guidelines are effective upon entry into force of the Agreement, which shall occur upon notification by the Government of the United States of America to the Government of the People's Republic of China that a U.S. licensee for the export of the ASIASAT or TAT satellite(s) or any other satellites, to the People's Republic of China for launch therein, has been approved.

For Further Information Contact: Bruce Wilson (395-7320), Steve Falken (395-4647), Angus Simmons (395-5050), or Warren Maruyama (395-6800), of the Office of the United States Trade Representative, 600 17th St., N.W., Washington, D.C. 20506.

Summary: Pursuant to the Administration's notification to Congress on September 12, 1988 regarding its intent to issue licenses for the export of three U.S.-made satellites to the PRC, subject to certain conditions, the United States of America and the People's Republic of China signed on January 26, 1989 a Memorandum of Agreement regarding international trade in commercial launch services. The United States Trade Representative considers the Agreement to be a trade agreement for purposes of Section 301(a)(1) of the Trade Act of 1974, as amended. (Copies of the Agreement may be obtained from the officials designated above.) In order to assist in the successful operation of the Agreement, certain guidelines that the U.S. government intends to follow to the maximum extent practicable in implementing the Agreement have been elaborated. This notice sets out these guidelines, which have been approved by the Trade Policy Staff Committee (TPSC) and by the United States Trade Representative.

Guidelines

I. Designation of Responsibility

Subject to the direction of the TPSC, the TPSC Subcommittee on Commercial Launch Services (the Subcommittee) will be responsible for overall implementation of the Agreement.

II. Sub-Committee Organization

For purposes of carrying out its responsibilities with respect to overall implementation of the Agreement, the Subcommittee will be chaired by the Office of the USTR and will be composed of

TPSC agencies and such other departments and agencies as may be invited by the Chairman to participate. A Working Group on Information (the Working Group) will be established to assemble such information as is necessary to enable the Subcommittee to carry out its responsibilities. The Working Group will be chaired by the Department of Transportation and will include the Department of Commerce, the Department of State and such other departments or agencies as are designated by the Chairman of the Subcommittee.

III. Subcommittee Functions and Procedures

1. Data Collection and Monitoring of the Agreement

The Subcommittee will monitor PRC compliance with the Agreement. To this end, the Subcommittee will review market and other information relevant to participation in the commercial launch services market by PRC launch service providers and to compliance by those providers with the terms of the Agreement. This information will be assembled, together with a preliminary assessment, and presented to the Subcommittee by the Working Group. Particular attention will be given to information relevant to PRC obligations under the Agreement with respect to the number of launches committed and carried out by the PRC; the distribution of commitments to launch; promotional prices; prices, terms, and conditions of PRC launch commitments; PRC government supports and inducements; insurance; non-discrimination; and launch delays.

The Subcommittee will review and determine which information is to be provided to the PRC to comply with U.S. obligations under the Agreement. This information will be assembled, together with a preliminary assessment, and presented to the Subcommittee by the Working Group. Particular attention will be given to U.S. obligations under the Agreement with respect to the provision of publicly releasable information to the PRC on prices, terms, and conditions prevailing in the international market for commercial launch services, including insurance arrangements relating to such services; U.S. views regarding prevailing international market conditions and likely future developments; U.S. and other government supports or inducements; and the number of commitments U.S. launch service providers have undertaken for international customers.

The Working Group will periodically produce information and preliminary assessments of conditions in the commercial launch services market, including prices, terms and conditions, commitments, and market forecasts, for the Subcommittee as needed to implement effectively the Agreement and at least ninety days prior to annual consultations, or the comprehensive review provided for in Article VII of the Agreement.

The Working Group will also provide to the Subcommittee such additional information and preliminary assessments on compliance by PRC providers of launch services with the provisions of the Agreement as needed, and at least sixty days prior to annual consultations or the comprehensive review provided for under Article VII of the Agreement.

2. Annual Consultations

The Subcommittee will meet at least seventy-five days in advance of the annual consultations prescribed in the Agreement to begin preparations for such consultations. After each annual consultation, the Subcommittee will report on the results of the consultations and recommend any follow-up actions to the TPSC and, as appropriate, to other government officials or agencies.

The Subcommittee will seek to hold annual consultations under the Agreement during March of each year and to exchange information with the PRC at least thirty days in advance of such consultations.

3. Application of Market Principles Under Certain Provisions of the Agreement

The Subcommittee will consider ways to carry out Article IV(4) of the Agreement and be prepared to address this issue with the PRC during the first annual consultation under the Agreement.

4. Discussions with Other International Parties

At least annually, the Subcommittee will consider whether discussions with other international parties could be beneficial. If the Subcommittee determines that discussions could be beneficial, it will recommend to the TPSC and to the U.S. Trade Representative that such discussions be initiated.

IV. Consultations with Domestic Interests

The Subcommittee and the Working Group will, in carrying out the functions and procedures set forth in Section III above, consult with and seek the advice of representatives of U.S. commercial launch service providers, launch vehicle manufacturers and satellite manufacturers, and, as appropriate, interested Congressional committees, the user community, and other interested parties, including the relevant private sector advisory committees. Such contacts will be made in conjunction with the information and assessments referred to in Section III(1) above and U.S. preparation for, and follow-up on the results of, meetings with the PRC held under the Agreement. The Subcommittee will also, as appropriate, inform such interests of significant requests or notifications made by the PRC under the Agreement, or significant developments

under the Agreement.

v. Information Sharing

In the course of consulting with domestic interests, in particular prior to annual consultations under the Agreement, the Subcommittee may provide such information provided by the PRC as is allowed by the Agreement.

VI. Treatment of Business Confidential Information

A. General

- (1) The Department of Transportation (DOT), as Chairman of the Working Group, will have primary responsibility for soliciting and receiving, and will maintain, information to be collected and reviewed by the Working Group for purposes of this Agreement.
- (2) Proprietary or other information collected by the Working Group for which business confidential treatment has been requested as provided in subsection (B) below shall not be made available to the Subcommittee except as determined by the Chairman of the Subcommittee to be necessary, and shall not be released to the PRC or any other party. The Chairman of the Working Group will work with anyone submitting such information to assure that it is not disclosed to any unauthorized person.

B. Procedures

- (1) Proprietary or other information submitted to the Working Group through the Chairman of the Working Group may be designated as business confidential by the person or agency furnishing such information.
- (2) A request that information be given business confidential treatment shall be made in writing at the time that the information is submitted to the Working Group, and shall state the period of time for which business confidential treatment is required.
- (3) Information for which business confidential treatment is requested shall be clearly marked with an identifying legend, such as "Proprietary Information" or "Business Confidential Treatment Requested." Where such a marking proves impracticable, a cover sheet containing the identifying legend shall be securely attached to the compilation of information for which business confidential treatment is requested.

(4) Business confidential treatment requested for information submitted to the Working Group shall not be available to the extent such information is already in the public domain.

VII. Remedies

(1) If, as a result of information obtained in any annual consultation or the comprehensive review required under Article VII of the Agreement or, on the basis of information presented to it by the Working Group, the Subcommittee is of the view that PRC providers of launch services are not in compliance with the terms of the Agreement, the Subcommittee will notify the TPSC and recommend consultations with the PRC if appropriate. If consultations proceed and satisfactory resolution is not achieved with the PRC, or, if consultations are deemed to be inappropriate in the circumstances, based on recommendations of the Subcommittee, the Section 301 Committee may recommend that the USTR initiate an investigation pursuant to the authority set forth in Section 301(a)(1) of the Trade Act of 1974, as amended. The recommendation to the USTR may also be accompanied by such additional advice as the Subcommittee deems appropriate.

(2) Any petition filed under Section 302(a)(1) of the Trade Act of 1974, as amended, by a representative of the U.S. commercial launch services industry or any other person with standing alleging a denial of U.S. rights under the Agreement or a violation of the Agreement shall be filed with the Section 301 Committee pursuant to USTR regulations for complaints filed under Section 302. Upon receipt of the petition, the Section 301 Committee will notify the Subcommittee of the petition, and, in addition to its own review of the petition, will seek the advice of the Subcommittee on the petition. If the Subcommittee is of the view that PRC providers of launch services are not in compliance with the terms of the Agreement, it will make such recommendations to the Section 301 Committee as it deems appropriate.

(3) If an investigation under Section 302 leads to a determination by the USTR that a violation of the Agreement has occurred, the USTR will take such action, subject to the specific direction of the President, if any, as is appropriate under Section 301.

(4) The USTR will, from time to time, advise the Secretary of State of the status of the implementation of the Memorandum of Agreement in order that this information may be available to the Secretary with respect to export license responsibilities under the Arms Export Control Act and the implementing regulations, the International Traffic in Arms Regulations, 22 CFR Parts 120-130.

Alan F. Holmer

Alan F. Holmer, Acting
United States Trade Representative

US-PRC TRADE AGREEMENT ON LAUNCH SERVICES:
SUMMARY OF KEY PROVISIONS

I. General

Although styled a "Memorandum of Agreement," the document represents more a set of unilateral commitments by the PRC than a reciprocal arrangement between the two governments. The only commitments made by the US involve periodic consultations and an exchange of publicly available data. The agreement does not commit the US to issue export licenses for payloads even if the PRC complies with the terms of the MOU, but states that the US will act on license applications consistent with US law.

A letter to interested private US parties dated 27 January 1989 from Assistant US Trade Representative Bruce Wilson explains the intentions of the US negotiating team with respect to key terms used in the agreement. The understanding of the US concerning the meaning of these terms are set forth in footnotes throughout this summary.

II. Trade Issues and Market Entry

The agreement states that both governments support the application of "market principles"¹ to commercial launch services (defined as any commercially provided launch of any satellite for an international customer²): i.e. avoidance of below-cost pricing, government inducements and unfair trade practices.

The PRC commits to ensuring³ that launch services providers it controls or which operate within its territory do not materially impair⁴ the smooth and effective functioning of the international launch services market. To wit:

¹ The term is understood by the US negotiating team to refer to economic principles governing purchasing and selling decisions by nongovernmental producers and consumers in market economies. ▶

² US negotiators believe the phrase rules out configuring transactions with international customers, particularly other governments, so as to avoid obligations under the agreement, including the limitation on the number of launches.

³ As used in the agreement, the terms "ensure," "require" and "prevent" are intended by US negotiators to impose binding obligations on the parties but, in recognition of differences in the US and PRC legal systems, to provide some flexibility concerning how the specific obligations can be implemented.

⁴ The expression is understood to mean a material negative effect, taking into account market developments.

- A. Government Support: Direct or indirect PRC support must be in accord with prevailing international practices (defined as practices of market economies).
- B. Pricing: PRC shall require that its launch services providers offer and conclude contracts that are on a par with⁵ prices, terms and conditions with those prevailing in the international market.
- C. Introductory Prices: PRC shall prevent its providers from offering introductory or promotional prices except for the first or -- in extraordinary circumstances⁶ -- second successful commercial launch⁷ of a new launch vehicle. Except for Aussat B-1 and B-2, no promotional prices for any launches using the Long March IIE or III launch vehicles.
- D. Insurance: Insurance and reflight guarantees must be on a par with prevailing rates and practices in international markets (i.e. insurance and launch markets) for comparable risks.

Quantity Restrictions: PRC launch services are only a supplement to existing services. Thus:

1. PRC providers shall not launch more than 9 communications satellites for international customers through 1994 (including the two Aussat and one Asiasat payloads). Communications satellites are defined as any satellite providing

⁵ The phrase "on a par with" is used in the pricing and insurance provisions of the agreement and is intended to mean similar but not necessarily equal. How it is applied to a particular set of facts must take into account the totality of the prices, terms and conditions of one contract with the totality of such items of another contract.

⁶ US negotiators view such circumstances as including those in which the first launch, though ostensibly successful, was so fraught with complications and difficulties as to raise legitimate and substantial doubts as to the possible success of a subsequent launch. The clear intent is to limit severely the use of promotional pricing for a new vehicle after the first successful launch and not to interpret the phrase so as to make it easily permissible to use a second promotional price.

⁷ A "successful commercial launch" will be viewed by the US as one in which the launch services provider fulfills its contractual obligations.

telecommunications services that is a primary payload of a launch⁸.

2. Anti-Bunching Provisions:

a. Contract Awards: Launch commitments (defined as agreements to launch comsats but do not include reservation agreements) must be proportionately distributed over the six-year period of the agreement. The PRC shall prevent a disproportionate concentration of launch commitments during any two-year period.⁹

b. Launches: PRC providers may not commit to launch more than three comsats in any year covered by the agreement¹⁰ and the PRC shall ensure that launches covered by this restriction are performed as scheduled.

Inducements: The PRC agrees not to offer inducements of any kind in connection with the provision of launch services to international customers that would create discrimination against other launch services providers.

III. Non-Discrimination

To provided assurances to third party governments and their launch services providers, a provision was added containing 1) a US statement that US launch firms do not discriminate unfairly against any international customers or suppliers and that no USG policy encourages such discrimination, and 2) a commitment by the PRC that it shall require that its providers not engage in any such unfair discrimination.

⁸ The Wilson letter makes clear the intention of US negotiators that a dual launch of two communications satellites be treated as launches of two primary payloads. A key factor in determining whether a comsat is a primary payload is if the launch would take place without it. Similarly, in the case of a dual launch of a comsat and a domestic PRC satellite, the comsat would be deemed a primary payload if it would require its own dedicated launch were it not to be launched on the dual launch.

⁹ The Wilson letter states that this provision is intended to achieve a distribution of PRC launch commitments throughout the period of the agreement.

¹⁰ The agreement limits the PRC to committing to launch not more than "twice the average annual number of launches" permitted by the preceding paragraph. The Wilson letter underscores the US view that this means three launches.

IV. Consultations

The agreement provides for annual consultations on implementation issues, including government supports and market developments. Consultations to discuss specific issues are to occur within 30 days of a request by either side. At the annual consultations, the PRC may request reconsideration of the limitation on the number of comsat launches if there are unforeseen market developments¹¹; the US must respond within 30 days.

The agreement also commits the parties to work toward a common understanding of the application of market principles to prices, terms and conditions of commercial launch services for international customers. The implementation plan for the agreement (see p. 6) commits the US to initiating discussions with the PRC on this matter during the first annual consultations.

Information exchanges are to occur as follows: In advance of the annual consultations, the US shall provide publicly releasable information on prices, terms and conditions prevailing in the international market. The PRC shall provide the above information with respect to PRC providers as well as other information it feels may have a material effect on pricing practices. Requests for additional data shall be responded to within 30 days. Both parties will also provide, in advance of the annual consultations, consolidated data showing the launch commitments for international customers that their respective providers have entered into.

V. Reservation of US Rights

The agreement contains an explicit statement that if, after consultations, the US finds clear evidence of violations of the agreement, all rights of the US to take appropriate action under its laws and regulations are reserved. The agreement further states that each export license will be reviewed on a case-by-case basis and that the agreement in no way constrains the US from taking any appropriate action consistent with its law and regulations. The US does commit to do its utmost to assure the continuity of licenses that have been issued and the completion of the transactions covered by such licenses.

VI. Discussions on International Rules

The agreement states that both governments are prepared to enter into discussions with other interested parties on comprehensive

¹¹ US negotiators believe the US should only consider increasing the permitted number of launches in extraordinary circumstances: e.g., the inoperability of western launch systems or the sudden development of an unexpectedly robust international market for launch services. US negotiators also believe that the government should consult with the US launch industry and other interested parties before granting any increases.

international rules with respect to government supports and other matters relating to commercial launch services, but that nothing in the agreement shall prejudice any position either party may take in such discussions.

VII. Comprehensive Review

The parties have committed to a comprehensive review of the terms and operation of the Agreement beginning in September 1991.

VIII. Definitions

An annex contains definitions of terms used in the Agreement. In addition to the terms whose definitions are referenced in the parenthetical comments above, the annex also defines

1. "prices, terms and conditions" to include financing terms and conditions as well as schedules for progress payments; and
2. "inducements" to include political pressure, provision of resources unrelated to commercial launch services, and offers of favorable treatment under or access to defense and national security policies and programs, development assistance, or economic assistance (e.g., trade, investment, debt or foreign exchange policies).

January 27, 1989

Dear _____:

In discussing with various interested parties how the U.S. government intends to implement the Memorandum of Agreement Between the United States of America and the Government of the People's Republic of China Regarding International Trade in Commercial Launch Services (the Agreement), a number of people have sought clarification as to the meaning of certain terms and provisions in the Agreement.

While final interpretation of any particular term or provision of the Agreement is of course subject to the mutual agreement of both parties, I am able at this time to provide you with certain information as to what the U.S. negotiating team intended to accomplish through the use of certain terms and provisions in the Agreement. In this regard, I would note the following:

- 1) Market principles (Article II.a) - This term is understood by the U.S. team to refer to those economic principles which govern purchasing and selling decisions by non-governmental producers and consumers in market economies.
- 2) Ensure, require, and prevent - These terms were intended by the U.S. team to impose on the parties binding obligations under the Agreement, but, in recognition of differences in the U.S. and PRC legal systems, to provide a modicum of flexibility as to how the specific obligations in question can be implemented.
- 3) Materially impair the smooth and effective functioning of the international market (Article II.b) - This expression is understood by the U.S. team to mean a material negative effect, taking into account market developments.

- 4) "On a par with" (Article II.b(ii) + (iv)) - This phrase means, in the view of the U.S. team, similar but not necessarily equal. How it is applied to a particular set of facts must take into account the complexity of comparing the totality of the prices, terms, and conditions of one contract with the totality of such items of another contract.
- 5) "Extraordinary Circumstances" (Article II.b (iii)) - In the view of the U.S. team, such circumstances would include those in which the first launch, though ostensibly successful, was so fraught with complications and difficulties as to raise legitimate and substantial doubts as to the possible success of a subsequent launch. The clear intent of the U.S. team was to limit severely the use of promotional pricing for a new vehicle after the first successful launch and not to interpret the phrase in such a way as to make it easily permissible to use a second promotional price.
- 6) "Successful commercial launch" (Article II.b(iii)) - A successful commercial launch is viewed by the U.S. team as one in which the launch services provider fulfills its contractual obligations.
- 7) Antibunching of commitments to launch (Article II.-(c)(ii)) - The language in this section was intended by the U.S. team to achieve a distribution of PRC launch commitments throughout the period of the Agreement.
- 8) "Twice the Average" (Article II.c(ii)) - In the view of the U.S. team, this phrase means that PRC providers of commercial launch services may not promise to launch more than three satellites in any year, that number being twice the annual average of one and one-half launches permitted under the Agreement.
- 9) "Unforeseen developments" (Article IV(3)) - The U.S. team believes that the U.S. government should only consider increasing the permitted number of launches under the agreement due to unforeseen developments, e.g., if western launch vehicles were to become inoperable, or if the international market for launches of communications satellites were quite robust. The U.S. team also believes that the U.S. government should consult, *inter alia*, with the U.S. launch service industry before taking such a step.
- 10) "Commercial launch services" - Annex 1 - The U.S. team believes that this phrase rules out configuring transactions with international customers, particularly other governments, so as to avoid obligations under the

Agreement, including the limitation of the number of launches.

11) "Primary Payload" - Annex 1 - The U.S. team believes that where a commercial launch involves two or more communications satellites, each satellite is deemed to be a primary payload for purposes of the limitation contained in Article II.c.(i) if the launch would not take place without such a satellite. Likewise, in the case of a dual launch of a communications satellite, which would be launched on a separate launch if it were not to go on the launch in question, and a domestic PRC satellite, the international satellite would be deemed "a primary payload" and count against the launch limitation.

I hope this information is helpful.

Sincerely,

S. Bruce Wilson
Assistant U.S. Trade Representative
for Services and Investment